

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

SSA PACIFIC, INC.

and

**Cases 20-CA-151433
20-CA-156741
20-CA-156786**

**RONI SIMISOLA, an Individual
JOHN STUBBE, an Individual
ALAN COUCH, an Individual**

PACIFIC MARITIME ASSOCIATION¹⁵¹

and

**Cases 20-CA-153169
20-CA-156732
20-CA-156792**

**RONI SIMISOLA, an Individual
JOHN STUBBE, an Individual
ALAN COUCH, an Individual**

**INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 18**

and

**Cases 20-CB-151490
20-CB-156767
20-CB-156787**

**RONI SIMISOLA, an Individual
JOHN STUBBE, an Individual
ALAN COUCH, an Individual**

David B. Reeves, Esq., for the General Counsel.

*Robert S. Remar and Kirsten C. Donovan, Esqs.,
for Respondent International Longshore and
Warehouse Union, Local 18.*

*Nicole Buffalano and Todd Amidon, Esqs.,
for Respondent Pacific Maritime Association.*

Joseph M. Galosic, Esq., for Respondent SSA Pacific, Inc.

BENCH DECISION ON REMAND AND CERTIFICATION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this remanded case on January 24, 2019 via telephonic conference. At issue are allegations, remanded to me on November 21, 2018, that Respondent International Longshore and Warehouse Union, Local 18 (Local 18) violated Sections 8(b)(1)(A) and Respondents Pacific Maritime Association (PMA) and SSA Marine, Inc. (SSA) violated Sections 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et. seq. (the Act), in each case by maintaining an overly broad hiring hall rule. The challenged rule, known as Identified Casuals Dispatch Rule 12 (Rule 12), provides as follows:

12. Casuals causing a disturbance at the Dispatch Hall or at any other job-related area shall have their dispatch privileges permanently revoked.

(GC Exh. 14) The two remanded allegations are set forth at paragraphs 9, 15(a) and 18 of the amended consolidated complaint (complaint). Pursuant to the Board's remand order, I am charged with considering the remanded allegations in light of the Board's decision in *The Boeing Company*, 365 NLRB No. 154 (2017).

At the January 24, 2019 hearing in this matter, Counsel for the General Counsel stated that, based on the *Boeing* decision, the General Counsel considers complaint paragraphs 9, 15(a) and 18 to lack merit and believes that they should be dismissed. (See Tr. 2194, ll. 11-25, 2195, ll. 1-15) ("the position of the General Counsel is that the ALJ and the Board should dismiss the remaining allegations of the complaint"). Based on this representation by Counsel for the General Counsel, Local 18 and PMA (joined by SSA) orally moved to dismiss the respective complaint allegations remaining against them. Counsel for the General Counsel opposed neither motion, and I subsequently issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, granting Respondents' motions and recommending the dismissal of complaint paragraphs 9, 15(a) and 18.

In accordance with Section 102.45, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision.¹ The Conclusions of Law and Order provisions are set forth below.

CONCLUSIONS OF LAW

1. By maintaining Identified Casuals Dispatch Rule 12, Respondent International Longshore Warehouse Union Local 18 did not engage in an unfair labor practice within the meaning of section 8(b)(1)(A) of the Act, as alleged in paragraphs 9 and 18 of the complaint.

¹ The bench decision appears in uncorrected form at pp. 2206 through 2208 and p. 2210 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this certification.

2. By maintaining Identified Casuals Dispatch Rule 12, Respondent Pacific Maritime Association did not engage in an unfair labor practice within the meaning of section 8(a)(1) of the Act, as alleged in paragraphs 9 and 15(a) of the complaint.

5 3. By maintaining Identified Casuals Dispatch Rule 12, Respondent SSA Pacific, Inc. did not engage in an unfair labor practice within the meaning of section 8(a)(1) of the Act, as alleged in paragraphs 9 and 15(a) of the complaint.

10 On the findings of fact and conclusions of law herein, and on the entire record in this case, I issue the following recommended²

ORDER

15 The remanded complaint allegations set forth at complaint paragraphs 9, 15(a) and 18 are dismissed.

Dated: Washington, D.C. February 27, 2019



Mara-Louise Anzalone
Administrative Law Judge

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

APPENDIX A

This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations. On September 13, 2016, I issued my initial recommended decision in this case, which I found in part the Respondent Employers violated 8(a)(1) of the Act, and Respondent Union violated 8(b)(1)(A) of the Act, in each case, by maintaining a hiring hall dispatch rule that we refer to as ID Casual Rule 12. My rationale for finding the rule unlawful, as maintained by the Respondent Employers was based on the then-in-effect standard for employer-promulgated facially neutral rules under 8(a)(1) of the Act, set forth in *Lutheran Heritage*, 343 NLRB 646 (2004). On December 14, 2017, the Board issued its *Boeing* decision (that we refer to as the new standard or the revised standard) at 365 NLRB No. 154. It partially overruled *Lutheran Heritage*, and announced its revised standard for evaluating facially neutral employer-promulgated rules. On April 3, 2018, the Board issued a decision in this case, affirming my recommended decision on all but two of the allegations; those are the allegations set forth at complaint paragraphs 9, 15(a) and 18 related to ID Casual Rule 12. It severed and retained those allegations for further consideration.

On October 22, 2018, the Board issued a Notice to Show Cause as to why the two severed allegations should not be remanded to me to consider under *Boeing*. No party responded by the Board's stated deadline. On November 21, 2018, the Board remanded the matter to me for the purpose of reopening the record, if necessary, preparing a supplemental decision addressing the complaint allegations affected by *Boeing*, setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended order. On November 28, 2018, I issued an order allowing the parties the opportunity to move to reopen the record in this proceeding for the purpose of taking evidence on the issues raised by the application of the *Boeing* standard to the case. PMA, joined by SSA, did so.

Now, based on the motion that is being offered by Respondent ILWU Local 18, I am finding that, by maintaining ID Casual Rule 12, set forth in paragraphs 9 and 18 of the complaint, Respondent, International Longshore Warehouse Union Local 18, did not engage in an unfair labor practice within the meaning of section 8(b)(1)(A) of the Act. I further find that, by maintaining Rule 12, as set forth in paragraphs 9 and 15(a) of the complaint, Respondent Pacific Maritime Association and Respondent SSA Pacific, Inc. did not engage in an unfair labor practice within the meaning of section 8(a)(1) of the Act.